

REPORT

Human Rights in Action

Case studies from Regulators, Inspectorates
and Ombudsmen

Acknowledgements

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This guide revises and updates [*The Human Rights Framework as a Tool for Regulators and Inspectorates*](#) which was published by the Ministry of Justice in 2009.

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Introduction

Public authorities, including Regulators, Inspectorates and Ombudsmen (RIOs), have an obligation to comply with the Human Rights Act 1998 (HRA), and case law has clarified that they also have positive obligations to promote and protect human rights when carrying out public functions. If a public authority (or any organisation exercising a public function) fails to comply with the HRA, a person who is affected by that failure may be able to take action on this basis in the UK courts. Therefore, people working for RIOs need to understand human rights and take them into account in their day-to-day work.

People who lead RIOs, particularly those responsible for setting organisational practices and policies, can use this guide to see how applying human rights legislation has the potential to transform the way services are planned and delivered.

This guide presents real case studies provided by RIOs who have been working to promote compliance with human rights obligations in a variety of different ways. The fact that more case studies have been provided than can be included in this guide is an illustration of the wide ranging use some RIOs are already making of human rights legislation to guide their practice and improve their performance.

While the guide is aimed at those RIOs working in England and Wales, some case studies have been drawn from Northern Ireland and Scotland where the experience of RIOs contains relevant lessons.

It should be noted that this guide does not constitute (and should not be used as a substitute for) legal advice.

RIOs may also wish to refer to the Equality and Human Rights Commission's guide on human rights obligations for public authorities [Human Rights, Human Lives](#).

Human rights explained

What are human rights?

Human rights are the basic rights and freedoms that belong to everyone.

International law, including treaties, contains the provisions which give human rights legal effect. Ideas about human rights have evolved over many centuries and the formal protection of these rights gained strong international support after World War II. In order to protect future generations from a repeat of gross human rights abuses – in particular the Holocaust – the United Nations in 1948 adopted the Universal Declaration of Human Rights which, for the first time, set out the fundamental rights and freedoms shared by all human beings without discrimination of any kind.

By signing up to international human rights treaties, a state takes on a legal obligation to respect, protect and fulfil the human rights of those within its jurisdiction. This is the position in the United Kingdom, which has ratified many such treaties and is held to account for its progress in complying with them. Some human rights, such as the right to respect for family life, can be limited or qualified in certain well-defined circumstances. However, international law makes clear that certain rights can never be restricted. These include the right not to be tortured or enslaved.

The human rights framework in the UK

The 'human rights framework' is a description which refers to all legal and other human rights commitments made by the UK. These include:

- treaties agreed under the auspices of international bodies, principally the United Nations, such as the International Covenant on Civil and Political Rights and the United Nations Convention on the Rights of Persons with Disabilities
- treaties agreed at a regional, European level, such as the European Convention on Human Rights (ECHR) which was agreed under the auspices of the Council of Europe, and

- laws about human rights made at a national level: in the UK, this is principally the Human Rights Act 1998 (which incorporates the ECHR into our own law), although many other national laws play an important part in upholding human rights.

There are also numerous guidelines, declarations and codes of conduct about human rights issued by international, regional and national bodies. Some of these advise states on how treaties should be interpreted. Although these are not usually directly binding, they are relevant to how these human rights commitments are interpreted and can inform the development of new law.

For the purposes of this guide, the most important elements of the human rights framework are as follows:

European commitments

[The European Convention on Human Rights \(ECHR\)](#), which was agreed by member states of the **Council of Europe**, has been in force since 1953 and contains a number of rights, primarily civil and political, set out in a series of Articles. The rights ('Convention rights') apply to everyone within the jurisdiction of the states who are parties to it. The European Court of Human Rights in Strasbourg decides cases brought by individuals whose Convention rights may have been breached, once they have taken all possible steps to have their claim resolved at national level.

[The Charter of Fundamental Rights](#) was agreed under the auspices of the **European Union**. It covers civil, political, economic, social and cultural rights and became binding across the EU in 2009 when the Treaty of Lisbon came into force. It binds all EU Member States, including the UK, but only when implementing EU law.

National law

[The Human Rights Act 1998 \(HRA\)](#) gives direct effect in UK law to most of the Convention rights. It does this by requiring public authorities to act in accordance with these rights (unless they are required to do otherwise by primary legislation).

Convention rights included in the HRA are

- The right to life (Article 2)
- The right not to be subjected to torture, inhuman or degrading treatment or punishment (Article 3)
- The right to be free from slavery and forced labour (Article 4)

- The right to liberty (Article 5)
- The right to a fair and public trial or hearing (Article 6)
- The right not to be subject to arbitrary or retrospective criminal penalties (Article 7)
- The right to respect for private and family life, home and correspondence (Article 8)
- The right to freedom of thought, conscience and religion (Article 9)
- The right to freedom of expression and to receive and impart information (Article 10)
- The right to assembly and to associate with others, including in organisations like trade unions (Article 11)
- The right to marry and start a family (Article 12)
- The right not to be discriminated against (Article 14)
- The right to peaceful enjoyment of possessions and property (Protocol 1, Article 1)
- The right to education, including respect for the religious and philosophical convictions of parents (Protocol 1, Article 2)
- The requirement to hold free and fair elections (Protocol 1, Article 3)
- Abolition of the death penalty (Protocol 6, Article 1)

Some national laws are relevant to protecting aspects of human rights, like the Equality Act 2010. Others are drafted in such a way as to protect human rights. For example, the Mental Health Act 1983 guards against arbitrary deprivation of the right to liberty (a Convention right) and the Police and Criminal Evidence Act 1984 guards against unfairness in criminal proceedings, the right to a fair trial being another Convention right.

The Convention rights in the HRA are incorporated in the devolution statutes relating to Scotland, Wales and Northern Ireland. These statutes also make provision for the enforcement of Convention rights through their own legal frameworks.

International commitments

The UK has ratified a number of international human rights treaties, many covering economic, social and cultural rights as well as civil and political rights. Unlike the ECHR, these treaties have not been made part of our domestic law but they can have an impact in other ways, for example as a useful tool for interpreting domestic

legislation in the courts. They can also be used as a set of guiding principles for public policy-making.

The following international treaties are of most relevance to this guide:

- [UN Convention on the Elimination of All Forms of Racial Discrimination](#)

Relevant to all RIOs.

- [UN Convention on the Elimination of All Forms of Discrimination Against Women](#)

Relevant to all RIOs.

- [UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#)

Relevant to RIOs regulating and inspecting places of detention. It could also have relevance in other situations, including health and social care settings.

- [UN Convention on the Rights of the Child](#)

Relevant to RIOs concerned with education, health, social care and other local authority services aimed at children and young people.

- [UN Convention on the Rights of Persons with Disabilities](#)

Relevant to RIOs concerned with education, health, social care and other local authority services.

- [UN Convention Relating to the Status of Refugees](#)

Relevant to RIOs dealing with all aspects of immigration and border control and also those who deal with public services provided to refugees and asylum seekers.

- [International Covenant on Civil and Political Rights](#)

Relevant to most RIOs because it protects a range of civil and political rights for individuals, such as the right to life, freedom of speech, freedom of religion and others.

- [International Covenant on Economic, Social and Cultural Rights](#)

Relevant to most RIOs because it commits states to work towards granting a range of economic, social and cultural rights for individuals including labour rights, the right to health, the right to education, the right to an adequate standard of living and others.

Positive human rights obligations

Case law has confirmed that, as well as ensuring human rights are not breached, public authorities have obligations to take positive measures to protect human rights. These are called positive obligations. Positive obligations are particularly relevant to the right to life, the right not to be subjected to torture or to inhuman or degrading treatment or punishment, and the right to respect to private and family life, home and correspondence. The right to private life in this context is quite broad and includes protection of physical and mental integrity.

In practice what these positive obligations mean for public authorities could include:

- A duty to provide a reasonable level of resources. For example an individual might need some practical support for their rights to be protected.
- A duty to provide information to those whose rights might be at risk, so that they are in a position to take action to protect their own rights.
- Taking effective measures to deter conduct that would breach human rights.
- A duty to respond to breaches of human rights – such as investigating the circumstances of the alleged breach.

Key concepts underpinning human rights

There are a number of inter-related concepts underpinning human rights which are embedded in international law, and have been endorsed by the decisions of the European Court of Human Rights. These concepts have informed our own courts and others about how human rights law should be interpreted and applied. They bring balance and proportion into play and are at the core of how human rights protection works in practice. RIOs will find them useful as a guide for decision-making and developing policies and practice.

Restriction of rights

Some rights can, under certain circumstances, be limited (such as the right to liberty) or restricted (such as the right to free expression). This is because it is sometimes necessary to restrict one person's rights to ensure that the rights of another person, or the interests of wider society, are protected.

However, no human rights can be limited or restricted without good cause and certain conditions must be met if restrictions on human rights are to be justified. There must be a clear legal basis for the restriction so that it can be foreseen by those who might be affected and there must also be a legitimate aim for establishing a restriction (each right sets out the aims which are legitimate for purpose of the restriction of that right). Typically, the legitimate aims will be to protect one of the following interests: the rights of others, national security, public safety, public health and the prevention of crime and disorder. A restriction must not discriminate against a particular group or class of people. Additionally any restriction, if it is to be justified, must be necessary and proportionate.

The concept of proportionality lies at the centre of the human rights framework. It means that a right can only be restricted so far as is necessary to achieve the objective being sought. In simple terms, it means 'Don't use a sledgehammer to crack a nut'. When deciding if something is proportionate, it will be relevant to consider if reasons were given for the restriction, if there were a less restrictive alternative that could have been used and if any element of the right remains, or could have remained, even after the restriction is in place.

Any restriction must be necessary. That is a more stringent test than whether it is reasonable, useful or desirable. For a restriction to be necessary, there must be good reasons. It is not acceptable to restrict rights simply because you do not like what someone is doing.

Progressive realisation

It is recognised in the text of international human rights treaties that the fulfilment of economic, social and cultural rights (such as the right to health and to an adequate standard of living) can only be achieved over time through what is known as 'progressive realisation'. This means that states are expected to make continuous progress towards the full realisation of these rights. Regressive steps – depriving people of rights they used to enjoy – will contradict the principle of progressive

realisation and will be viewed as a violation of such rights unless the regressive steps can be justified.

Participation and empowerment

The *process* of realising human rights is as important as, and intrinsic to, their realisation. A number of human rights treaties, such as the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, contain provisions on participation, designed to give relevant individuals an effective voice in order to secure their rights. Effective participation may require information, capacity-building, training or education.

Equality and non-discrimination

Equality is one of the overarching principles of the human rights framework. It finds expression in the earliest of post-war agreements which set out the founding basis of the human rights framework. These include the United Nations Charter and the Universal Declaration on Human Rights. Equality is also at the core of those international treaties dealing with race discrimination, discrimination against women and the rights of disabled people. These international agreements have influenced domestic anti-discrimination legislation which was consolidated by the [Equality Act 2010](#).

However, protection against discrimination is only one aspect of the human rights concept of equality. One of the most important aspects of the ECHR is that most of the substantive protections start with the word ‘everyone’ – everyone has the right to life, the right to liberty and security of person, the right to freedom of thought, conscience and religion and so on. Further, the ECHR requires states not only to refrain from breaching rights but to ‘secure to everyone within their jurisdiction the rights and freedoms’ contained in the ECHR. This means that differences must be taken into account and catered for, proactively, if everyone’s rights are to be secured.

In domestic law, under the public sector equality duty (PSED), public authorities, including RIOs, must have ‘due regard’ to the need to advance equality of opportunity. Considerations under the PSED may include the effect of public authorities’ decisions on human rights. For example, the UN Convention on the Rights of Persons with Disabilities should inform the application of the PSED with respect to disabled people.

Putting human rights into practice – case studies from RIOs

Using human rights in practice at the heart of an organisation

The legal framework of human rights can inform organisational culture, impacting positively on what an organisation does and how it does it as well as helping it to meet its human rights obligations.

The following case studies illustrate steps taken by two RIOs to put human rights into practice at the heart of their organisations.

The Parliamentary and Health Service Ombudsman (PHSO)

The PSHO investigates complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS in England. After the Human Rights Act 1998 came into force, there was growing awareness at PSHO that human rights were at the heart of their case work. The challenge for the Ombudsman was to:

- show the organisation that human rights play a part in the delivery of ordinary day-to-day public services and healthcare
- give caseworkers the confidence to identify when someone's human rights were engaged and to make more explicit reference to human rights, and
- arrive at a position where thinking 'human rights' was the norm.

A range of initiatives were introduced to tackle these issues:

- a human rights strategy was produced and awareness training delivered. Human rights were placed firmly at the centre of internal conversations and of awareness-raising activities. Caseworkers could then more readily grasp the values underpinning human rights such as fairness, respect, equality, dignity

and autonomy and apply them to the complaints before them.

- a range of activities and tools were used to stimulate discussion, build confidence, identify and share good practice. Conferences for caseworkers were arranged, where staff discussed which human rights might have applied in real cases. Guest speakers emphasised that human rights are ‘Ombudsman territory’ because upholding basic human rights was part of promoting good administration. That meant acting in line with the relevant legislation, including the Human Rights Act, and
- consideration of whether human rights were engaged was built into the process by which cases were assessed and investigated.

As the Ombudsman’s approach to human rights matured, further actions included:

- examples of how cases had been considered through an awareness of human rights issues were identified, discussed, summarised and shared across the organisation
- a Network for Equality, Diversity and Human Rights in casework was established where a group of caseworkers discussed difficult cases and shared good practice examples
- a human rights-themed edition of the Ombudsman’s newsletter for caseworkers was published to coincide with Human Rights Day on 10 December. This was packed with up-to-date case examples showing how the Ombudsman was approaching human rights in casework, as well as with links to online resources and articles, and
- systems were created so that any case involving human rights is tagged and can be identified through a search mechanism.

These and many other activities mean that caseworkers have a good understanding of how human rights are relevant to the complaints that people bring to them. They have the confidence to use human rights in the right cases and in the right way.

Care Quality Commission

The purpose of the Care Quality Commission (CQC) is to make sure hospitals, care homes, dental and GP surgeries, and all other care services in England provide people with safe, effective, compassionate and high-quality care, and to encourage them to make improvements. An important way to do this is to ensure that people who use services have their human rights protected, respected and fulfilled. Therefore, promoting equality and human rights is one of six principles which inform all of CQC's work.

CQC is developing a human rights approach to put this principle into practice. Following a public consultation, the CQC published [Human Rights Approach for our regulation of health and social care services](#) in October 2014. It will put people who use services firmly at the heart of regulation and embed equality and human rights into CQC's inspection methodology in a consistent way. The steps CQC have taken or plan to take to develop this approach include:

- the development of a set of human rights-based principles to reflect CQC's specific concern with health and social care, that is: fairness, respect, equality, dignity, autonomy, right to life and rights of staff
- the further development of a set of human rights topics (for example the correct use of the Mental Capacity Act to gain consent when someone lacks mental capacity), which can be applied to the assessment frameworks that CQC uses. This includes working with the Department of Health on new regulations and developing assessment frameworks for specific service providers such as acute hospitals, mental health services, adult social care services and GP services
- once human rights topics are in assessment frameworks, CQC aims to ensure that it can anticipate 'risk to human rights' in services and that inspection teams have the information, methods and tools and skills in order to assess how well providers perform in relation to the human rights topics
- CQC aims to use this approach beyond individual inspections and to be able to comment on equality and human rights in the health and social care sectors in order to further drive improvement for people who use these services, and
- CQC will look at its own continuous improvement in relation to promotion of equality and human rights through evaluation of the impact of its human rights approach in regulation. This will be used to develop new information, tools and

learning approaches for inspection staff.

Improved decision-making across organisations

The human rights framework can inform decision-making and practice. The next case study shows how a particular aspect of human rights has influenced a range of initiatives across one RIO. The right in question is drawn from the 1951 Convention on the Status of Refugees.

The General Medical Council

The legal purpose of the General Medical Council (GMC) is to protect, promote and maintain the health and safety of the public by making sure that doctors meet standards for good medical practice.

Under the 1951 Refugee Convention there is a provision regarding the right to engage in wage-earning employment. This gives those with refugee status the right to 'the most favourable treatment accorded to nationals of a foreign country in the same circumstances'.

The GMC decided to introduce a range of initiatives because of this right and because of the challenges that often face refugee doctors in practising medicine in the UK. In doing so, the GMC were also mindful of the rights of others, including the right to life and the right to respect to private life which includes protection of physical and mental integrity.

The initiatives introduced included:

- **Fee reductions**

The GMC offers concessionary rates to refugee doctors taking the Professional and Linguistic Assessments Board (PLAB) test by which most international medical graduates demonstrate that they have the necessary skills and knowledge to practise medicine in the UK.

- **Engagement and sign-posting**

The GMC provides links on its website to organisations and information that may be helpful to refugee doctors. It has also been an active participant in the British

Medical Association's Refugee Doctors and Dentists Liaison Group for a number of years and seeks to engage actively with refugee doctors and their support groups. The Welcome to UK Practice programme aims to raise awareness of the ethical and professional standards expected of doctors practising in the UK. The GMC has used a variety of sources to inform the development of the pilot programme, including meetings with Reache (Refugee and Asylum Seekers Centre for Healthcare Professionals Education) Northwest.

- **Policy work**

The GMC met Reache North West and a group of their refugee doctors to seek feedback on the latest review of its PLAB test. More recently, the GMC has been working with Reache North West and RAGU (the Refugee Assessment and Guidance Unit) to understand the particular difficulties that refugee doctors face in meeting the evidence requirements for registration. This has allowed the GMC to explore how to help refugee doctors to understand from an early stage what is required and how and why the GMC verifies qualifications and documentation. The GMC is also considering how it might provide assistance where refugee doctors have come to the UK without their documents.

Handling complaints

Many RIOs deal with or monitor complaints from members of the public. Threats to human rights and/or allegations of violations can sometimes be at the core of the complaint made. The next two case studies show how RIOs have used the human rights framework when investigating individual complaints.

Prisons and Probation Ombudsman: family visits to prison

The Prisons and Probation Ombudsman (PPO) investigates complaints from prisoners, those on probation and those held in immigration removal centres. Ms R complained to the PPO about the removal of lifer family days. Lifer family days are when family members can visit for a whole day relatives who are in prison on indeterminate or life sentences.

Ms R explained that both her parents were elderly and disabled and lived a

significant distance from the prison. Therefore, the only opportunity she had to see them was during lifer family days. Ms R said that the removal of the lifer family days prevented her from seeing her parents and, apart from a friend who occasionally visited her, they were her only visitors. The prison said it did not have the funds or staff resources to facilitate such visits. They said that if the situation improved, they would reconsider the reinstatement of these visits.

The Ombudsman found that despite removing lifer family days, the prison still provided six children's visits days per year, which the prison confirmed were not usually oversubscribed. For those prisoners without children, visits from adult family members may be as important as visits from children were for other prisoners. Numerous Prison Service documents highlighted the positive impact on prisoners of visits from family members and stressed the importance of maintaining family ties as part of a person's rehabilitation and in order to decrease chances of re-offending.

The PPO considered the obligations arising under Article 8 of the ECHR (the right to respect for private and family life) when dealing with this complaint as well as Prison Rule 2, which requires the Prison Service to actively encourage prisoners to maintain outside contacts and meaningful family ties. The right to respect for family life can include the ability to have regular contact with family members. Although it is a right that can be restricted in certain circumstances, the PPO decided in these circumstances the restriction on this right was not justified.

The PPO recommended that the prison should review the visits policy and either:

- arrange for Ms R and other prisoners in her position to receive visits over both days of a weekend, or
- reinstate the lifer family days.

As a result of the PPO recommendations, the prison allowed Ms R and any other prisoners serving an indeterminate/life sentence to receive visits over both days of the weekend. This enabled Ms R's parents to visit her.

Prisons and Probation Ombudsman: homophobic bullying in prisons

Mr C complained about the failure of staff at the prison to address or respond appropriately to his allegation of homophobic bullying and assault by another prisoner, Mr D.

Mr C explained in his complaint that he had been subjected to homophobic insults, attempted assaults and actual physical assaults on six separate occasions by Mr D.

On behalf of the Ombudsman, the investigator spoke to a prison officer who told them that on the first occasion he witnessed any untoward behaviour from Mr D towards Mr C, Mr D was challenged about his homophobic comments and was made to understand that they were not appropriate. Mr D was told to apologise for his actions, which he subsequently did and 'both parties agreed to maintain a degree of decorum'. The prison officer noted that numerous strategies were employed (involving rescheduling sessions and coping strategies provided by the in-reach team) in order to keep the two individuals apart. He hoped these would help in the resolution of this matter.

The prison's local Equality and Diversity policy stated the prison's commitment to 'a policy of zero tolerance of discrimination, harassment or bullying on any grounds'. It went on 'All staff are expected to challenge unacceptable behaviour in order to change it'. Sexual orientation was clearly listed in the introduction as being covered by the policy. Under Part 4: Sexual Orientation, the policy clearly stated that the prison 'will not tolerate bullying on the grounds of any individual's sexuality'.

The prison did not record all the incidents that Mr C mentioned in his complaint. The prison failed to keep proper administrative records to document what happened and what action was required. No internal investigation had been carried out at the prison. The evidence appeared to show that the prison failed to implement their zero tolerance policy on discrimination as set out in their Equality and Discrimination Policy.

The Ombudsman's decision in upholding Mr C's complaint was informed by Article 3 and Article 14 of the ECHR. Article 3 provides a right not to be subjected to torture or other serious ill treatment and Article 14 sets out the prohibition of discrimination in how rights in the ECHR are enjoyed. In this case, there had been

discrimination on the grounds of sexual orientation.

The Ombudsman recommended that the Governor of the prison:

1. Ensured staff were properly recording equality and diversity breaches
2. Ensured that staff intervened in a timely manner in situations which required prisoners to be separated for their physical and mental safety, and
3. As recommended by a prison officer, commissioned the Equalities Manager to devise a protocol to prevent this kind of situation from happening again.

Inspections and investigations

(a) Using the human rights framework to inform inspection and investigation standards

All RIOs with an inspection or investigation function need a clear set of standards or criteria against which they conduct their work to provide consistency and transparency for the services they inspect or investigate. Some RIOs have explicitly embedded human rights in their inspection or investigation standards.

The next three case studies are examples of how embedding human rights in inspections has helped RIOs deliver a range of improvements in practice.

Case Study: Independent Chief Inspector of Borders and Immigration

The Chief Inspector of Borders and Immigration is appointed to assess the efficiency and effectiveness of the UK's border and immigration functions. He reports annually to the Home Secretary and his reports are laid before Parliament. In order to undertake this task, he has published a set of 10 inspection criteria, which are reviewed periodically, under the themes of:

- **Operational delivery**
- **Safeguarding individuals**
- **Continuous improvement**

Human rights explicitly inform the three criteria on safeguarding individuals:

- **All individuals should be treated with dignity and respect and without discrimination in accordance with the law** – the Human Rights Act and the Equality Act are specifically mentioned in how to assess this criterion.
- **Enforcement powers should be carried out in accordance with the law and by members of staff authorised and trained for that purpose** – again assessment against the Human Rights Act is specifically required.
- **All border and immigration functions should be carried out with regard to the need to safeguard and promote the welfare of children** – assessment is required against, among other things, the Children Act 2004, the Human Rights Act and the United Nations Convention on the Rights of the Child.
- Human rights also implicitly underpin other criteria, including timeliness in dealing with complaints.

Case Study: Independent Police Complaints Commission: review of the IPCC's work in investigating deaths

The Independent Police Complaints Commission (IPCC) conducted a review of the way that it investigates deaths following police contact. This resulted from criticism and concerns about the approach, timeliness and thoroughness of its investigations into deaths. The review published a final report on 17 March 2014, which is available on the IPCC website: www.ipcc.gov.uk. The final report summarises all the feedback received and the IPCC's response to the feedback and explains the actions that would be taken as a result.

Article 2 of the ECHR places an obligation on the state not to take life, except in very limited and defined circumstances, and to take reasonable steps to protect life where there is a real and immediate risk. If there is an indication that a death may be the result of police action, or of a failure to act, Article 2 requires there to be an independent and effective investigation to determine the circumstances and causes of the death. The IPCC's investigation work is an important part of the way the state meets that obligation, alongside the work of coroners and the Crown Prosecution Service (CPS).

Article 2 has underpinned all aspects of the IPCC's review. The obligations arising from Article 2 shape the way the IPCC investigate deaths involving the police. As well as determining how and why a person died, and whether any individuals are at fault, investigations should seek to ensure that deaths in similar circumstances can be prevented, and should effectively engage bereaved families in the investigative process.

Article 2 investigations should be inquisitorial and draw conclusions beyond misconduct and criminal behaviour (e.g. exploring poor practice or omissions in duty of care). They should consider what happened, why it happened, who (if anyone) is responsible and how a death could be prevented in the future.

The final report on the review published by the IPCC identified some changes to IPCC practices in order to ensure the essential features of an Article 2 investigation are met. Examples of these are:

Independent

- Strengthened guidelines on the role of the Commissioner in an independent investigation, which will ensure independence during a case.
- Draft statutory guidance in relation to ensuring best evidence in death and serious injury investigations. This sets out the expectations of the actions the police should take to identify all potentially relevant evidence and preserve the integrity of that evidence. The draft guidance also specifies that key policing witnesses should be separated before providing their initial accounts and should not confer. Staff have been provided with the skills and confidence to take control of a scene, both remotely and on arrival, to ensure there is independence at the start of the investigation.

Subject to public scrutiny

- Publish investigation reports to ensure greater transparency in the police complaints system.
- Publish the outcomes of our investigations, clarifying our own outcomes and those that result from disciplinary or criminal processes.

Promptness

- Continue to work with the Crown Prosecution Service to ensure we work more effectively to minimise delays.

Effective

- Ensure we use our powers robustly during investigations.
- Acquire powers to ensure Chief Officers have to respond formally to IPCC recommendations at the end of an investigation. This will enable the IPCC and others to monitor the progress of actions taken in response to an investigation and help prevent deaths in the future.

Engage with the next of kin

- Families will be involved in developing the terms of reference for the investigation so that these terms include the questions that the family wants the IPCC to try to answer.
- Families will be updated on the progress of the investigation. We will disclose all information, subject only to the 'harm test'. As we develop investigation plans, we will share them with the family. We will also explore providing them with draft reports.

(b) Using the human rights framework to identify poor policies and practice

The human rights framework gives meaning to concepts like dignity, fairness, respect and autonomy. These are concepts which often arise in the context of inspections and investigations by RIOs. Without the human rights framework, these notions can be interpreted very subjectively because people hold widely differing views about what is acceptable and what it not.

The following six case studies show how different RIOs have used human rights in the context of their inspection, investigation and review functions to identify and address poor practice and policies.

Case Study: Care Quality Commission

The Care Quality Commission (CQC) gave a number of examples of where the human rights framework had helped identify and address poor practice:

(1) Use of Do Not Attempt Resuscitation Notices

CQC regularly finds and acts on poor practice in relation to the use of Do Not Attempt Resuscitation (DNAR) Notices. On a specialist dementia ward, inspectors found that, while there was a good procedure around the issue of consent, when it came to use of DNAR notices evidence was lacking that this procedure was being followed consistently. There was little evidence that patients had been consulted about their wishes and in some cases decisions about use of DNAR notices had been taken on the basis of the age and fragility of the patient.

This raises serious issues under Article 2 of the ECHR (the right to life) and also Article 14 (the right not to be discriminated against in the enjoyment of human rights). The inspector took compliance action as a result of the practice on this ward and changes were initiated to ensure future appropriate use of DNAR notices.

(2) Detaining people in mental health inpatient setting

CQC continues to find instances of informal mental health patients (meaning those not detained formally under the Mental Health Act 1983) being locked into wards and therefore deprived of their liberty. This raises serious concerns under Article 5 of the ECHR which sets out the right to liberty. This right may be limited, if various safeguards are in place, in relation to those formally detained under the Mental Health Act. However, this is not the case for those patients who are informally detained. If they are locked into a ward against their wishes, this may constitute a breach of their right to liberty.

On one locked ward, there was a mixture of formal and informal patients. Staff assured the inspectors that informal patients would be let out if they asked staff, except in the case of one informal patient about whom they were particularly worried and they thought might leave the ward.

The inspectors decided that:

- if there were serious concerns about an informal patient leaving the ward, the person should have been assessed under the Mental Health Act and appropriate action taken. The person should have been lawfully detained under an appropriate legal framework, and
- other informal patients on the ward had also had their liberty taken away.

While the Trust in this instance reacted to the inspectors' findings in a piecemeal way, in other Trusts where this issue has been raised Trust-wide action has been

instigated to address the issue of protecting the rights of informal patients. This has included extra training for staff on appropriate use of the legal frameworks relevant to detention and the publication of a charter of rights for informal patients which such patients receive on admission.

Case Study: Mental Welfare Commission Scotland: use of CCTV in health and social care settings

The Mental Welfare Commission for Scotland (MWCS) visited a man with learning disabilities and autism. He was living in a staffed community setting with three other residents. Each had their own room. Because of a history of self-harm, staff had placed a closed-circuit television camera (CCTV) in his bedroom. This was to check that he was not harming himself. Staff had thought this was acceptable, so they placed CCTV cameras in all the residents' bedrooms, although did not have them switched on.

The use of CCTV in this way was a significant interference with Article 8 of the ECHR, the right to respect for privacy. It must be lawful, necessary and a proportionate response. In the man's case, it was arguable that it was necessary and proportionate. The alternative of having a member of staff with him at all times could have caused him more distress. However, the interference was such that the MWCS considered it needed authorisation by a court. In Scotland, welfare guardianship is the appropriate mechanism. This allows a Sheriff to consider whether or not an action is in line with human rights legislation.

The outcome was that the Sheriff granted the power. This made sure the individual's rights were protected and the staff were acting lawfully. However, placing CCTV cameras in all rooms was a disproportionate and probably unlawful interference with privacy, even if they were not activated. The care provider took them down. As a result of this case, the MWCS, Care Inspectorate and Scottish Human Rights Commission issued a [joint statement on the use of CCTV](#).

Case Study: HM Inspectorate of Constabulary: use of police custody for those with mental health issues

The police have powers under section 136 of the Mental Health Act 1983 to take individuals who are suffering in a public place from mental health issues to a 'place of safety' for their protection and in order that they can be medically assessed.

A joint inspection was carried out by HM Inspectorate of Constabulary, Her Majesty's Inspectorate of Prisons, the Care Quality Commission and the Healthcare Inspectorate Wales which examined the extent to which police custody is used as a place of safety. It also identified the factors which either enable or inhibit the use of other preferred settings as a place of safety, such as a hospital or other medical facility.

The inspection was informed by Article 3 of the ECHR, the right not to be subjected to torture or other serious ill treatment. In particular, it focused on a case brought against the UK by an individual, who had been held for some 75 hours in police custody under section 136: *MS v the United Kingdom*, (2012) 55 EHRR 23. In this case the European Court of Human Rights held that Article 3 had been breached. It found that the treatment was degrading, defined as being such to 'arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking their physical or moral resistance'.

This means that a person's human rights might be breached if they are held in police custody for a prolonged period where the police station is an unsuitable environment, even if the detention is in line with the Mental Health Act. This was one of the factors underpinning recommendations made in the inspection report, *A Criminal Use of Police Cells: The Use of Police Custody as a Place of Safety for People with Mental Health Needs* published June 2013, aimed at reducing the use of police custody as a place of safety. The report stated that if inappropriate use of police custody as a place of safety did not reduce significantly by April 2016 the inspectorates will seek to implement a recommendation that the Mental Health Act be amended to remove a police station as a place of safety except in exceptional circumstances.

Case Study: HM Inspectorate of Constabulary: Historic Enquiries Team in Northern Ireland

Upon the request of the Chief Constable of the Police Service of Northern Ireland (PSNI), in 2012, the Minister of Justice for Northern Ireland commissioned HMIC to inspect the role and function of the Historical Enquiries Team (HET), which is part of PSNI). The HET re-examines deaths attributable to ‘the troubles’ in Northern Ireland in the hope that they can bring a ‘measure of resolution’ to the families of those that lost their lives.

The inspection focused on whether the HET’s approach to reviewing military cases conformed to current policing standards and policy; adopted a consistent approach to all cases (i.e. both military and paramilitary cases); and if the HET’s review process met the requirements that would ensure it was compliant with Article 2 of the ECHR.

The inspection was underpinned throughout by the European Convention on Human Rights. In particular it used all aspects of the right to life inherent in Article 2 to examine whether the HET was (i) independent (ii) effective (iii) prompt when looking at the question of use of lethal force, and (iv) transparent and accountable, underpinned by some level of public scrutiny.

The inspection report – *Inspection of the Police Service of Northern Ireland Historic Enquiries Team* published July 2013 – concluded that the HET was not compliant with the requirements of Article 2 in a number of respects. It made a range of recommendations for the HET and the PSNI (amongst others) to help satisfy these requirements, including the introduction of mechanisms for more accountability to the public of Northern Ireland, the publication of specific terms of reference of the HET and the introduction of clear and accessible policies and procedures.

Case Study: Independent Chief Inspector of Borders and Immigration: marriage and civil partnerships

The Chief Inspector of Borders and Immigration undertook an inspection entitled *Inspection of Applications to Enter, Remain and Settle in the UK on the Basis of Marriage and Civil Partnerships*, the report of which was published in January

2013.

Article 8 of the ECHR protects the right to respect for private and family life. Therefore, its application is central to decisions about whether people can enter, remain or settle in the UK on the basis of their marriage or civil partnership, but it is a qualified right that can be restricted in certain circumstances. The inspection looked at whether human rights had been considered when deciding applications – in particular whether any resulting interference with Article 8 could be justified for the reasons permitted in Article 8(2). While it found this was routinely the case where applications were made in the UK, it was rarely the case when applications had been made overseas.

The inspection report recommended that the UK Border Agency ensure (i) that human rights are considered consistently in all relevant cases including overseas applications, and (ii) that reasons for its decision both under the immigration rules and human rights are properly evidenced, recorded and communicated to applicants.

Case Study: Independent Inspectorate of the Crown Prosecution Service (HMCPSI): a review of CPS compliance with rules and guidance in relation to disclosure of complainants' medical records and counselling notes in rape and sexual offence cases

The review examined whether or not Crown Prosecution Service (CPS) prosecutors complied with the statutory requirements of disclosure under the Criminal Procedure and Investigations Act 1996, and with CPS policy guidance, in relation to disclosure to the defence of complainants' medical records and counselling notes in rape and sexual offence cases.

As well as considering whether medical records and counselling notes are disclosable under the Criminal Procedure and Investigations Act 1996, prosecutors also need to consider whether or not a complainant has given their consent to disclosure of the documents to the defence. It is that aspect of the review that brought into play consideration of the ECHR.

The Divisional Court held in *R v Stafford Crown Court* [2006] EWHC 1645 that the

medical records of a complainant were *'confidential between the medical practitioner and the patient'*, and that a patient had *'a right of privacy'* under Article 8 ECHR. The CPS view is that if the complainant does not consent to disclosure, the prosecutor must apply to the court for an order to withhold the material. HMCPSSI therefore examined whether or not complainants had consented to the disclosure of their medical records and counselling notes to the accused. Failure to ensure consent could have been in breach of Article 8.

The findings of HMCPSSI were that it was difficult to ascertain whether or not a complainant had consented to disclosure. It considered the forms used by the police to obtain consent and concluded that some of the forms only sought consent for the police to obtain the material and then to pass it on to the prosecutor, while others also sought consent for disclosure to the defence where appropriate under the Criminal Procedure and Investigations Act 1996.

In addition to the different forms being used by the police, HMCPSSI also found that in the majority of the cases looked at it could not see anything in the file to show whether or not consent had been obtained. With some exceptions, prosecutors are not asking the police to approach the complainant for consent which means that it is possible that consent to disclosure was never obtained.

This led to the report of this inspection, published in July 2013, stating that CPS areas should ensure prosecutors comply with CPS guidance and satisfy themselves that complainants have consented to their medical records and/or counselling notes being disclosed to the defence. It is reported that the CPS has already put in place a number of measures to help prosecutors handle disclosure more effectively.

Enforcement action

A number of RIOs have enforcement powers. As the following four case studies illustrate, human rights can help determine if or what sort of enforcement action is appropriate and proportionate in individual circumstances.

Case Study: Information Commissioner's Office: enforcement regarding audio recording in taxis

The Information Commissioner's Office (ICO) is an independent body set up to uphold information rights in the public interest. The Commissioner is responsible for administering the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000. The ICO gives guidance to citizens and organisations, rules on eligible complaints and takes appropriate action when the law is broken.

In August 2009, Southampton City Council adopted a policy that required all licensed taxis and private hire vehicles to be fitted with CCTV systems featuring permanently activated audio recording facilities. The policy meant that all driver or passenger conversations, including those on mobile phones, taking place in any taxi or private hire vehicle licensed by the council, would be recorded, regardless of whether the conversation was personal and intended to be private. The recording would take place even when the vehicle was being used privately by the driver, for example to take their family on holiday.

The Information Commissioner considered the data protection implications of this policy and decided that the audio recording of the conversations of both the drivers and their passengers was unfair and unlawful and therefore in breach of the Data Protection Act 1998. This decision was based on the view that the policy could result in damage or distress being caused to the individuals concerned. The main reason for this view was that the information could be accessed illegally or wrongfully disclosed, but the simple knowledge that a conversation was being recorded could also cause distress, particularly where the vehicle was being used privately.

A major factor in coming to this conclusion was consideration of Article 8 of the ECHR, the right to respect for private life. The Commissioner took the view that the permanent audio recording of all conversations in licensed vehicles constituted an unlawful interference with that right. The Information Commissioner issued an enforcement notice to Southampton City Council to the effect that no further audio recordings should take place from 1 November 2012. He also required that any recordings obtained prior to this date should be erased.

Southampton City Council appealed against the enforcement notice, on the basis that the interference with the Article 8 right was justified in the interests of public safety and the prevention of crime and the protection of others. The Tribunal

upheld the Commissioner's position saying 'in our judgment the Council's policy, in so far as it requires continuous blanket audio-recording of everything said in taxis, was disproportionate when the extent of the interference with the right of privacy is weighed against the marginal benefits to the legitimate social aims of increasing public safety and reducing crime in relation to taxis which are likely to result from it'.

The Tribunal concluded that the policy was not justified under Article 8(2) and accordingly that it contravened the first data protection principle. The Tribunal also noted the argument that the Council's policy could result in people 'self-censoring' their conversations which could engage Article 10 of the ECHR which protects freedom of expression.

Case Study: Care Quality Commission: use of lap straps as a form of restraint

In a care home for older people, inspectors found that people were being restrained unlawfully using lap straps. The use of these lap straps restricted people from walking and moving around. In one instance, this posed a risk of exacerbating a person's condition which the staff had failed to manage appropriately. Staff were unsure of the reason for use of these restraints but some staff and the manager told the inspector they were used for 'health and safety' reasons.

This raises a range of human rights issues under the ECHR including Article 3 (right not to be subjected to torture and serious ill treatment), Article 8 (the right to respect for private life, which includes respecting physical and mental integrity) and Article 5 (the right to liberty). The provider was issued with a compliance notice and a warning notice under Regulation 11 of the Health and Social Care Act 2008. This judgement was based on the lack of planning and the delivery of restraint which put people at risk. The inspector raised a safeguarding alert, which was substantiated. CQC inspectors also provided witness statements for the police who investigated this matter.

Inspectors carried out a follow-up inspection and found that use of lap straps had been stopped. The restraint policy had been amended to reflect that use of lap

straps was a form of restraint and the policy stipulated in what circumstances this should be used. In the future, the use of lap straps would only take place after proper assessment and liaison with other professionals.

Case Study: Care and Social Services Inspectorate Wales: restrictive practices in care home

The Care and Social Services Inspectorate Wales (CSSIW), when visiting a small care home for adults with learning difficulties, observed an oppressive environment which included staff exhibiting controlling behaviour and restricting residents' activities. This included denying residents access to the kitchen and garden and imposing restrictions on personal choices such as what to watch on the television and what refreshments they wanted. In addition, the administration of medication was regimented and unnecessarily stressful.

An assessment of these practices was informed by obligations under Article 8 (the right to respect to private and family life, which includes respecting autonomy), and Article 10 (freedom of expression). CSSIW issued a non-compliance notice and a remedial action plan. As a result of this intervention, the service has improved and new systems were put in place to enable residents to communicate and have a voice on matters such as decoration of their environment, meals, recreational and other social activities. People's rights are being better protected as a result.

Case Study: Equality and Human Rights Commission: working with police forces on stop and search

In 2010, the Equality and Human Rights Commission (EHRC) published its [Stop and think](#) report, which focused on the use of stop and search powers by the police. This work was underpinned by a number of human rights considerations. The power to stop and search constitutes a deprivation of liberty and as such should be exercised in accordance with Article 5 of the ECHR (the right to liberty and security of person). The use of the power must also be compatible with Article 8 (the right to respect for privacy) and Article 14 (the right not to suffer discrimination in the enjoyment of other ECHR rights). This means that use of the power must be legal, proportionate and non-discriminatory.

The research showed that a black person was at least six times as likely as a white person to be stopped and searched by the police in England and Wales, and an Asian person was twice as likely to be stopped and searched. The EHRC concluded that the current police use of stop and search powers may be unlawful, disproportionate, discriminatory and damaging to relations within and between communities. It recommended that police services should strive to work fairly and effectively while respecting basic human rights.

Following publication of the 2010 report, the EHRC continued to monitor the use of stop and search in the five forces with the highest rates of disproportionality. It entered into formal legal agreements under section 23 of the Equality Act 2006 with two of those forces to address concerns and to work with them to avoid any further breaches of the Equality Act 2010.

The final follow up report, [Stop and think again](#) published in 2013, found that, as a result of the 18-month action programme supervised by the EHRC, the police forces had reduced their unfair use of stop and search powers by up to 50 per cent in some cases. There had also been a fall for some forces in disproportionate usage against ethnic minorities, alongside a continued reduction in crime rates.

Guidance

Human rights obligations can have an important role to play in informing guidance issued by RIOs. Through guidance, RIOs can encourage service improvements which better protect individual rights and reduce the likelihood of breaches occurring in the future, as the following case study shows.

Case Study: Mental Welfare Commission for Scotland: use of covert medication

The advice line of the Mental Welfare Commission for Scotland (MWCS) received many enquiries about the use of covert medication. In response, the MWCS collected case examples and invited a selection of health and social care practitioners, legal experts, service users and carers to a consultation event. Using their views on the pros and cons of covert medication in individual cases, the MWCS produced good practice guidance (updated in 2013).

The practice of using covert medication could breach an individual's Article 5 right to liberty and security of person and their Article 8 right to respect for privacy. Therefore it is essential both that medication is given lawfully and that it is necessary. It must also be proportionate to the situation, so it is important to explore alternatives. For example, its use may be proportionate where the alternative is that the individual suffers (or even dies) through not having treatment, or suffers from a more invasive and painful procedure for giving medication. Unnecessary restraint and forced injection of medication may breach Article 3 of the ECHR (freedom from torture or other serious ill treatment).

[The MWCS guidance](#) contains a pathway which, if followed correctly, will ensure that covert medication is administered safely, in accordance with legal safeguards and with regard to the rights of the individual.

Reports and research

Many RIOs undertake research and publish reports on a wide variety of issues. As the following case studies show, embedding a human rights approach into the

analysis of issues can be an effective way to produce concrete recommendations or outcomes that can have real benefits for individuals. It is also a way of clearly indicating that an organisation views compliance with human rights law as part of its core values.

Case Study: Parliamentary and Health Service Ombudsman: Six Lives Report

In March 2009 the Health Service Ombudsman and the Local Government Ombudsman published a joint report called *Six Lives: the provision of public services to people with learning disabilities*. The report was significant for many reasons, not least because it helped shape the Parliamentary and Health Service Ombudsman's thinking on how to articulate and use human rights in casework.

The report drew attention to what the Ombudsmen described as a failure on the part of several NHS healthcare providers and local authorities to 'live up to human rights principles, especially those of dignity and equality'. Those failures contributed to findings of maladministration and service failure in the level of care afforded to six individuals with learning disabilities, all of whom eventually died while receiving NHS treatment for conditions unrelated to their learning disabilities.

The report contrasted the experiences of the six individuals and their families with the UK Government's stated policy aims of wanting to 'create a new "human rights culture" among public authorities. Specifically, it said that an 'underlying culture which values human rights was not in place in the experience of most of the people involved'. It also referenced PHSO's *Principles of Good Administration*, which expects public bodies to act in accordance with the law and with regard to the rights of those concerned.

The Ombudsmen recommended that NHS bodies and councils urgently confronted whether they had the correct systems and culture in place to protect individuals with learning disabilities from discrimination, in line with existing laws and guidance. In 2012, the Department of Health published its response to the report and set out further work to be done to address the issues raised by the report.

Case Study: Office of the Children’s Commissioner: child protection

The Office of the Children’s Commissioner (OCC) is responsible, under the Children and Families Act 2014, for promoting and protecting the rights of children in England. In 2013, they undertook a piece of research to understand the views and experiences of children and young people in relation to child protection in order to improve their access to help. The project resulted in publication of a report, *It Takes a Lot to Build Trust: Recognition and Telling – Developing Earlier Routes to Help for Children and Young People*.

Central to the work of the OCC is the UN Convention on the Rights of the Child (UNCRC) – the most complete statement of children’s rights ever produced and the most widely ratified human rights treaty. It was adopted by the UK Government in 1989 and came into force in 1992.

The Articles of the UNCRC which informed this project and the resulting report include:

Article 3: in all actions concerning children, the best interests of the child shall be a primary consideration

- Article 12: every child has the right to express their views in all matters affecting them, and to have their views taken seriously
- Article 19: the right to protection from violence, abuse, neglect and mistreatment
- Article 34: the right to protection from sexual abuse and exploitation
- Article 39: the right to help with recovery from abuse.

These interrelated rights, when looked at together, illustrate that effective protection must take account of children’s own understanding of their needs, how they protect themselves, their perception of what needs to change in their family and of available help. Understanding that protection and safety are children’s basic rights can help professionals to stay child-focused and that is a major aim of the child protection system.

Article 12 of the UNCRC informed both the content of the report and the process by which the project proceeded. Young people were involved in advisory and research capacities throughout the project and were involved in the dissemination of the report. The report includes a conceptual framework for understanding and responding to children’s experiences and a set of recommendations for services

and responsible public bodies.

Case Study: Office of the Children’s Commissioner: rights-based analysis of disabled children’s experience living on low income

The Office of the Children’s Commissioner (OCC) initiated a project aimed at developing better understanding of the experiences of disabled children living on low income. It did so using the lens of children’s rights as set out in the UN Children’s Rights Convention (UNCRC) and other relevant international human rights treaties, including the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights.

The specific rights in the UNCRC (which informed this work and underpin the report’s position that the Government has a direct responsibility to tackle poverty) include:

- Article 27: the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development
- Article 26: the right to benefit from social security
- Article 12: the right of every child to express their views in all matters affecting them, and to have their views taken seriously. This Article informed not just the content of the report but also the process by which the project proceeded.

A steering group of 11 disabled children and young people led the research and a wider group of 78 individuals were involved in the compilation of the report – *We Want to Help People See Things Our Way: A Rights Based Analysis of Disabled Children’s Experience Living with Low Income* published in 2013.

The OCC found, amongst other things, that the rights of disabled children and young people were infringed when some of their families could not afford to heat their homes properly and when some disabled young people living independently did not have enough food and clothing.

The report made a range of recommendations for Government and other responsible bodies.

Hearings, adjudications and appeals

The right to fair trial provisions in Article 6 of the ECHR apply to both criminal and civil proceedings. The content of this right as it applies to civil proceedings mean that hearings must:

- be independent, both of government and the parties to the action – relevant factors include how individuals presiding over hearings were appointed (including judges and tribunal members), safeguards against outside pressure and the appearance of independence
- follow fair procedures and allow for effective participation – including questions of disclosure, evidence and ensuring a reasonable balance between the resources available to the two parties in bringing or defending a case (also known as ‘equality of arms’), and
- deal with matters within a reasonable time – relevant factors being the complexity of the case, the seriousness of the issue at stake and the conduct of the parties involved.

Many RIOs are responsible for various types of hearings which decide civil law matters. Some have taken steps to ensure that these types of hearings give the fullest effect possible to the right to a fair trial, as the following case studies illustrate.

Case Study: Medical Practitioners Tribunal Service: fair proceedings

Like many regulators, the General Medical Council (GMC) has responsibility for both the investigation and the adjudication of complaints. ‘Fitness to practise’ panels make decisions about the appropriate action to protect patients where there are serious concerns about doctors. These decisions are made after hearing evidence presented by the GMC and by the doctor and/or their representative.

While the panels have always made those decisions independently, there has been an ongoing concern about the perception of fairness – mindful of the right to a fair trial under Article 6 of the ECHR – where the same organisation is responsible for both investigation and adjudication of complaints. This led to Government proposals for an independent adjudicator. When those proposals proved too costly, the GMC looked at how the benefits of independent adjudication

could be achieved without the cost of setting up an entirely separate body.

In June 2012, the GMC established the Medical Practitioners Tribunal Service (MPTS) to manage the day to day running of hearings. While still part of the GMC, the MPTS is based in a separate dedicated hearing centre in Manchester and is operationally separate from the regulator's complaints handling, investigation and case presentation work.

The MPTS is led by an independently appointed Chair. As well as managing the adjudication function, the Chair is responsible for appointing, training, appraising and performance managing panellists. The Chair reports directly to Parliament. When the tribunal service has been fully established in statute, the GMC will have a right of appeal against MPTS decisions.

These changes continue to embed the Article 6 of the ECHR by giving confidence in the impartiality and independence of decisions made when there are serious concerns about a doctor's fitness to practise.

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Case Study: Bar Standards Board: fair hearing

The Bar Standards Board works to ensure that the disciplinary system for barristers is both robust and fair and operates in compliance with the rights protected by the ECHR, particularly Article 6. To ensure fairness within the system, there is a right of appeal to an independent body in relation to enforcement decisions that result in the imposition of a sanction. For example, there is a right to appeal against internal staff or Committee decisions to impose an administrative sanction i.e. a warning or a fine up to £1,000. These sanctions are used where there is a breach of the Bar's Code of Conduct which is not sufficiently serious as to require disciplinary action. The right of appeal ensures that the barrister concerned has real and effective access to an independent and impartial tribunal in accordance with Article 6.

Hearings themselves may deal with human rights issues, as the following case study illustrates.

Case Study: Ofwat: adoption of private sewers

The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 (the Regulations) came into force on 1 July 2011. These Regulations, together

with section 105B of the Water Industry Act 1991, provide for the adoption by sewerage undertakers of sewers, lateral drains and sewage disposal works from private property owners, and the appeals process that follows. Ofwat, the economic regulator of the water and sewerage industry in England and Wales, determines the appeals and, as part of its consideration of an appeal, considers the impact of Article 1 of the First Protocol to the ECHR (Article 1) which provides for the right to respect for property.

Where an owner of a sewer or lateral drain or sewage disposal works or any other person affected by the proposal to adopt (or failure to do so) is aggrieved by the proposal of the undertaker, that person may appeal to Ofwat. In deciding these appeals, Ofwat has considered the impact of Article 1 on whether a payment of compensation is necessary to strike a 'fair balance' between the interest of the state (that private sewers are adopted by sewerage undertakers) and those of the individual property owner, when all the relevant circumstances are taken into account. It is considered that the compulsory transfer of sewers and/or lateral drains does lead to 'deprivation' of ownership for the purposes of Article 1. However, ordinarily, this deprivation is offset by the fact that the property owner retains the use of the sewer and/or lateral drain and is relieved of the related maintenance obligation. Examples of the final decisions on the transfer of private sewers and lateral drain can be found on the [Ofwat website](#).

Private contractors

Although obligations in the HRA fall on public authorities, including RIOs, they also fall on a person or organisation that exercises functions of a public nature. So a private sector organisation may be carrying out a public function when working under contract with a public authority. Because there is no list of what is (and what is not) a public function there can be uncertainty about the dividing line. Some public authorities address this through commissioning and procurement by adding into their contracts with private companies clauses on compliance with human rights law. This is good practice when combined with effective oversight.

At least one RIO (the Pensions Regulator) reported that, when contracting out to the private sector, it has included in the contractual and procurement arrangements a duty to comply with human rights law (or a similar type of provision).

Case Study: The Pensions Regulator

The Pensions Regulator has engaged a commercial third party to assist it with the delivery of some of its enforcement powers under the Pensions Act 2008. It is of fundamental importance to The Pensions Regulator that those carrying out functions on behalf of the Regulator adhere to all applicable laws including the Human Rights Act 1998 and adopt the same rigour as The Pensions Regulator in relation to the exercise of discretion in decision-making.

To support this approach, The Pensions Regulator's commercial contract with the provider places an obligation on the provider to follow the Ministry of Justice's guidance on Human Rights Law when providing the services.

The Pensions Regulator will be auditing its commercial provider to ensure it is adhering to its contractual obligations.

Case Study: Equality and Human Rights Commission

The Care Act 2014 clarified categorically that all providers of regulated social care services that are publicly funded or arranged (the majority are now private or third sector providers) were carrying out public functions and therefore subject to HRA obligations. However, before this, in order to assist local authorities to fulfil their HRA obligations, the Equality and Human Rights Commission recommended a template contractual schedule for care providers which set out obligations that relate to human rights. This has the effect of requiring a contractor to act compatibly with the HRA and gives individuals using contracted services a direct right of redress against the contractor in the event that their human rights are breached. See [Close to Home Recommendations Review](#) (in Appendix B).

Service user participation and empowerment

Involvement and participation can be both a means to the enjoyment of human rights and a human right in themselves. This is reflected in a number of human rights agreements. For example, Article 12 of the UN Convention on the Rights of the Child provides, for children who are capable of forming their own views, the right to express those views freely in all matters affecting them. The case studies in this guide from the Office of the Children's Commissioner reflect a strong commitment to this principle, with the meaningful and effective involvement of children and young people being central to their work.

Listening to those in receipt of or those affected by the services which are being inspected, regulated or monitored can help RIOs help to identify human rights issues. This in turn can encourage service providers to embed human rights in their approach to service delivery, as the next two case studies illustrate.

Case Study: Care Quality Commission: 'Putting People First' initiative

For several years, CQC has engaged people who use services:

- in their inspection teams as 'experts by experience'
- as advisors in helping the organisation plan and prioritise work. Standing advisory panels include eQuality Voices who monitor CQC's commitments to equality, diversity and human rights, and the Service User Reference Panel, made up of people who are or have been detained under the Mental Health Act, and
- by working with local involvement networks; CQC has run a network of community groups called 'Speak Out' who work with communities who are often not heard.

CQC has devised a new *Statement of Involvement* launched in December 2013 incorporating lessons learned over the past few years. The new statement envisages enhanced involvement of service users. This includes:

- involving an even wider range of people who use services. In particular CQC wishes to engage people using learning disability services and mental health services, disabled people and children and young people
- extending partnership work with local people including community groups, advocacy organisations and others who receive complaints about poor care,

and

- increased use of service users in inspections and visits under the Mental Health Act and in a broader range of inspections more generally. This will include the provision of effective training and support.

Case Study: Care Quality Commission: value of service user involvement in protecting rights

An inspector and an 'expert by experience' undertook a visit to a mental health in-patient ward. Part of the visit included looking at all aspects of the physical environment of the ward, including patient bedrooms. The inspector used an observation panel on one bedroom door to look into a bedroom, which was occupied by a patient. The 'expert by experience' was able to point out to the inspector that there would be less intrusive ways of looking at the bedroom areas. It was not necessary to use the observation panels in the same way as staff used them in the context of the inspection. This was brought to a team meeting and a discussion was had, led by the inspector and the 'expert by experience', about ways of looking at bedroom areas that reduced significantly interference with the patient's right to respect for privacy under Article 8 of the ECHR. The involvement of the 'expert by experience' helped develop practice that was more mindful of the privacy rights of patients.

The language of rights

There are a plethora of different words – some of them quite technical – associated with human rights. This has led to some people shying away from the topic, leaving it for the lawyers. Human rights can sometimes be easier to understand when the simpler language of the central values upon which human rights treaties are founded – such as dignity, respect for others, equality, fairness, non-discrimination and personal autonomy – is used. Most of these values are embedded explicitly or implicitly in all human rights treaties. They have been affirmed in domestic and international case law, in academic debates and in civil society discourse as being at the heart of human rights protection.

The values on which human rights law is based can be used to help anticipate potential breaches of human rights law. For example a dirty hospital ward is most unlikely to be sufficiently bad as to breach the right not to be subjected to inhuman or degrading treatment or punishment, or the right to respect for private and family life. However, getting the hospital to think in terms of the dignity of the patient can help improve services and stop bad practice which might lead to a breach at some point in the future.

However, it is important that when human rights values are used, they are clearly and explicitly linked back to formal human rights obligations. If the connection between values and law is lost, concepts such as dignity and fairness cannot be understood or applied effectively. Their meaning can become subjective and there is a risk of them ceasing to be an effective tool for service improvement and holding to account those who provide services.

Here is an example of how one RIO has made good connections between the human rights values and standards:

Case Study: Chief Inspector of Borders and Immigration: linking of principles to standards

The Chief Inspector of Borders and Immigration has published a clear set of criteria against which inspections are conducted. Criterion 5, under the general theme of safeguarding individuals, provides: 'All individuals should be treated with dignity and respect and without discrimination in accordance with the law'. The document goes on to explain that this criterion must be assessed by reference to the Human Rights Act 1998 and the Equality Act 2010. Criterion 7, also under the general theme of safeguarding individuals, provides: 'All border and immigration functions should be carried out with regard to the need to safeguard and promote the welfare of children'. The document goes on to explain that this must be assessed by reference to a range of relevant human rights instruments including the Human Rights Act 1998 and the UN Convention on the Rights of the Child.

Mechanisms for ongoing practice improvement

The integration of human rights law and values into the work of RIOs is an ongoing process which can be informed by monitoring and evaluating different methods and approaches used, listening where appropriate to the views of those who use the relevant services and learning from the experience of other RIOs.

The following case study shows how a group of RIOs has worked together to improve practice informed by specific human rights obligations in relation to the protection against torture and ill treatment in detention, as part of the enforcement mechanism required of all those states who have ratified the Optional Protocol to the UN Convention against Torture.

Case Study: Preventing torture and ill-treatment in all places of detention: the role of the UK's National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture

In 2009, the UK formally designated a mechanism to prevent torture and ill treatment in places of detention. This is the National Preventive Mechanism (NPM), which comprises 20 public bodies from the four nations of the UK, all of which are independent of government and have formal powers to inspect places of detention. This mechanism directly implements the Optional Protocol to the UN Convention against Torture (OPCAT) in the UK, and is supported and scrutinised by an official UN human rights body, the Sub-Committee on Prevention of Torture.

In practical terms, implementing OPCAT means that NPM members must regularly examine the treatment of persons deprived of their liberty, with a view to strengthening their protection against torture and ill treatment. In so doing, NPM members must act with independence. NPM members must make recommendations to authorities with the aim of improving the treatment and conditions of those in detention and preventing torture and ill treatment. They also have the powers to comment on existing or draft legislation to this same end.

To make these powers real, OPCAT bestows a responsibility on the government to allow the NPM to visit all places of detention within the UK's jurisdiction and to access information about them, to guarantee its functional independence, and provide it with the necessary resources to carry out its functions.

In the first five years of its functioning, the UK NPM has made strides towards

improving the coordination between the many layers of monitoring, visiting and inspection across the UK. Its members are lay and professional bodies, covering mental health detention, police custody, immigration detention, prisons and other detention settings. Through coordination, NPM members have been able to share good practice, strengthen the application of human rights standards through their work, ensure consistency in approach and deepen understanding of specific detention-related issues. Specifically, the NPM has worked to ensure that:

- all detention settings in the UK are subject to independent monitoring, achieving progress in the coverage of court cells, medium-secure units for children and young people, and 'non-designated' police cells among others
- monitoring bodies strengthen their understanding of practices amounting to *de facto* detention in order that they can prevent torture and ill treatment in such scenarios
- new arrangements for lay prison visiting in Scotland are independent and compliant with OPCAT standards
- human rights implications of use of force and restraint, deaths in custody, segregation and other topics are more widely understood, and
- no prisoners or detainees are subject to reprisals or sanctions arising from their contact with monitors or visitors.

The RIO Forum

The RIO Forum is a group of regulators, inspectorates and ombudsmen with an interest in human rights and equality. It is facilitated by the Equality and Human Rights Commission and meets quarterly to share knowledge and experiences of embedding human rights into practice.

If you work for a RIO and are interested in joining the RIO Forum please contact: rioforum@equalityhumanrights.com

Further reading

Human Rights: Human Lives – Equality and Human Rights Commission 2014.

Available at: www.equalityhumanrights.com/publication/human-rights-human-lives-guide-human-rights-act-public-authorities

Human rights review – Equality and Human Rights Commission 2012. Available at:

www.equalityhumanrights.com/publication/human-rights-review-2012

Close to home: an inquiry into older people and human rights in home care –

Equality and Human Rights Commission 2011. Available at:

<http://www.equalityhumanrights.com/publication/close-home-inquiry-older-people-and-human-rights-home-care>

Ours to own: understanding human rights – Equality and Human Rights Commission 2008. Available at:

www.equalityhumanrights.com/human-rights/human-rights-practical-guidance/area-generic/ours-to-own-understanding-human-rights

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

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